

Memorandum

To: Julie Dubick
From: James Ingram
Re: Proposed Language on Salary Setting
Date: August 26, 2007

Per Subcommittee request, the staff has completed a new draft of the proposed Charter language to alter the Charter's salary setting provisions.

Based on the testimony heard before the Subcommittee, and the Salary Setting Commission's most recent report which was reviewed by staff, the Salary Setting Commission appears to be working properly in its establishment of the salaries of the Mayor and Council. The present process, then, has apparently permitted that body the necessary flexibility to consider whatever factors it deems necessary in recommending salaries. Thus, there may be no need to require the body to index City officers' salaries against judges or their counterparts in comparable cities, or to establish an automatic process that arbitrarily uses a single measure, such as inflation, for setting these salaries.

The only problem with the current process is that it requires the Mayor and Council to vote upon their salaries. This has placed elected officers in a difficult position, where they always appear to be acting from narrow self-interest when they vote upon their salaries. Consequently, they do not act to raise their salaries, even when an independent and objective body has indicated that they need to do so. As a result, City officers' salaries are now set at such a level that unless they are able to support themselves from independent means (such as retirement pensions or their own investments), good potential candidates might hesitate to seek office. This does more than injure the short-run financial standing of the individuals elected to City government. It threatens the long-run interests of the City, because San Diego's ability to continue attracting quality candidates to elective offices may depend upon establishing salaries that would allow these candidates to live in the City.

The following language would keep the salary setting process of the City largely at its *status quo*, and continue to enable the voters to exercise their direct democracy right of referendum if they think City officers' salaries should not be increased. Yet the proposed language would take City officers out of the process to some degree, and allow an independent and objective body to decide upon their compensation. The salaries suggested by the Salary Setting Commission in the past might have, if they had been implemented, been reasonable. It is just that the implementation of their good suggestions needs to be streamlined, and freed from the politics of the process as it now stands.

The Subcommittee voted to accept the language proposed by the City Attorney's representatives, subject to changes that would not so hamstring the Civil Service Commission in its selection of the members of the Salary Setting Commission. However, staff has noticed that the language drafted by the City Attorney's representatives does follow the California Constitution's provisions in specifying the factors to be taken into account in setting salaries. Some Subcommittee members had expressed dissatisfaction with inclusion of those factors when staff had placed them in a previous draft. As the staff was unsure as to whether the Subcommittee desires the Charter to determine the factors the Salary Setting Commission is to use in establishing compensation, or to remain silent on such factors, staff has drafted two options for language.

Proposed Charter Amendment Language

Option One—Allow Salary Setting Commission to Decide How to Set Salaries

SECTION 12.1. ~~COUNCILMANIC SALARIES~~ **OF ELECTED OFFICIALS.**

On or before February 15 of every even year, the Salary Setting Commission shall recommend to the **Mayor and** Council the enactment of an ordinance establishing **or modifying** the salary of ~~members of the Council~~ **all elected City officials** for the period commencing July 1 of that even year and ending two years thereafter. The Council ~~may~~**shall** adopt ~~those~~ salaries by ordinance ~~as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount.~~ **The ordinance adopting the salaries of elected officials shall be separate from the City's Salary Ordinance and shall not be subject to any veto provision of Article XV.** The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. **Until an ordinance establishing or modifying the salaries of elected City officials takes effect, the officials shall continue to receive the same annual salary received previously. This section shall not be subject to the provisions of section 11.1.**

SECTION 24. MAYOR.

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~~The rate of pay of the Mayor shall be \$12,000.00 per year.~~

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SECTION 24.1. ~~MAYOR'S SALARY:~~

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.~~

[SECTION 24.1 REPEALED IN ITS ENTIRETY.]

SECTION 40. CITY ATTORNEY.

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The salary of the City Attorney shall be fixed **as provided in section 12.1** ~~by the Council~~ and set forth in the annual appropriation ordinance, ~~provided except~~ that the salary of the City Attorney may not be decreased during a term of office, ~~but~~ **and** in no event shall said salary be less than \$15,000.00 per year.

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SECTION 41.1. **SALARY SETTING COMMISSION.**

There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. **The Commission shall consist of the following persons: (1) Three public**

members, one of whom has expertise in the area of compensation, such as an economist, market researcher, or personnel manager. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974. (2) Two members who have experience in the business community. (3) Two members, each of whom is an officer or member of a labor organization. The Civil Service Commission shall strive insofar as is practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the City in appointing commission members. ~~The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two-year terms and four are appointed for four-year terms. The Salary Setting Commission shall recommend to the Council the establishment and modification enactment of an ordinance establishing salaries for all elected officials—the Mayor and Council—as provided in section 12.1 of by this Charter. The City Manager shall provide from existing resources the staff and services Council shall provide the funds necessary to enable the Commission to perform its duties. The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.~~

Option Two—Provide Expressly for Factors to Be Used by Salary Setting Commission in Establishing Compensation

[All of the above language listed in Option One is included, in addition to the following language at the end of Section 41.1:]

The Commission shall consider in establishing or modifying the annual salary for elected officials the following factors, including but not limited to:

- (1) The elected official's responsibility and scope of authority, and the amount of time directly or indirectly related to the performance of the duties, functions, and services of the office.**
- (2) The annual salary of other elected and appointed municipal officials with comparable responsibility in this and other states.**
- (3) The benefits package accompanying the City office.**
- (4) Comparable data including the Consumer Price index and rates of inflation.**
- (5) The relative cost of living in the City and the establishment of salaries adequate to attract sufficiently qualified candidates.**

Staff Analysis

Either of the options would allow San Diego to achieve what Los Angeles, San Francisco and even the State of California have already done by establishing a reasonable process to establish the compensation of their officers. Those governments have realized that requiring elected officials to set their own salaries places them in a position with an intractable conflict of interest. Even when they make the public happy by reducing their salaries, they have to sacrifice the public's long-term interests by setting up a situation in which elective offices may not attract candidates that are appropriately representative. After all, not many ordinary citizens have the means to live without a decent salary. If salaries are set

exceedingly low, few persons that are representative of the City and their districts will be able to consider running for office. Moreover, if candidates seek public office even when it is significantly under-compensated, one has to consider the ethical issues. What other motives beside salary might impel one to seek public office, when the salary attached would not allow one to support oneself and one's family?

Current Charter Sections Prior to Proposed Alteration

"SECTION 12.1. COUNCILMANIC SALARIES.

On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the salary of members of the Council for the period commencing July 1 of that even year and ending two years thereafter. The Council may adopt the salaries by ordinance as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.

(Addition voted 11-06-73; effective 12-07-73.)"

"SECTION 24. MAYOR.

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The rate of pay of the Mayor shall be \$12,000.00 per year.

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"SECTION 40. CITY ATTORNEY.

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The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than \$15,000.00 per year."

"SECTION 41.1. SALARY SETTING COMMISSION.

There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two-year terms and four are appointed for four-year terms. The Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing salaries for the Mayor and Council as provided by this Charter. The Council shall provide the funds necessary to enable the Commission to perform its duties. The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.

(Addition voted 11-06-73; effective 12-07-73.)"

Other San Diego Charter Sections That Are Relevant to this Language

"SECTION 11.1. LEGISLATIVE POWER -- NONDELEGABLE.

The same prohibition against delegation of the legislative power which is imposed on the State Legislature by Article XI, Section 11a of the Constitution of the State of California shall apply to the City Council of The City of San Diego, so that its

members shall not delegate legislative power or responsibility which they were elected to exercise in the adoption of any ordinance or resolution which raises or spends public monies, including but not limited to the City's annual budget ordinance or any part thereof, and the annual ordinance setting compensation for City employees, or any ordinance or resolution setting public policy.

The City Council shall annually adopt an ordinance establishing salaries for all City employees. The City Council shall adopt this ordinance not later than May 30 of each year after considering all relevant evidence including but not limited to the needs of the citizens of the City of San Diego for municipal services, the ability of the citizens to pay for those services, local economic conditions and other relevant factors as the Council deems appropriate. The City Council shall give priority in the funding of municipal services to the need of the citizens for police protection in considering adoption of this salary ordinance and the annual budget ordinance.

The prohibition imposed by this section against unlawful delegation of the legislative responsibility to set compensation for city employees shall extend to any scheme or formula which seeks to fix the compensation of City of San Diego employees at the level of compensation paid to employees of any other public agency whose governing board is not elected by and not accountable to the people of the City of San Diego. This prohibition shall also extend to any scheme or formula which seeks to fix, establish, or adjust the compensation of City of San Diego employees at the level of the largest cities in California or the State of California.

*(Addition voted 06-03-80; effective 07-16-80)
(Amendment voted 11-04-80; effective 12-31-80.)
(Amendment voted 06-03-86; effective 09-08-86.)"*

Salary Setting Provisions of California Constitution, Article 3

SECTION. 8. (a) The California Citizens Compensation Commission is hereby created and shall consist of seven members appointed by the Governor. The commission shall establish the annual salary and the medical, dental, insurance, and other similar benefits of state officers.

(b) The commission shall consist of the following persons:

(1) Three public members, one of whom has expertise in the area of compensation, such as an economist, market researcher, or personnel manager; one of whom is a member of a nonprofit public interest organization; and one of whom is representative of the general population and may include, among others, a retiree, homemaker, or person of median income. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974.

(2) Two members who have experience in the business community, one of whom is an executive of a corporation incorporated in this State which ranks among the largest private sector employers in the State based on the number of employees employed by the corporation in this State and one of whom is an owner of a small business in this State.

(3) Two members, each of whom is an officer or member of a labor organization.

(c) The Governor shall strive insofar as practicable to provide a balanced representation of the geographic, gender, racial, and ethnic diversity of the State in appointing commission members.

(d) The Governor shall appoint commission members and designate a chairperson for the commission not later than 30 days after the effective date of this section. The terms of two of the initial appointees shall expire on December 31, 1992, two on December 31, 1994, and three on December 31, 1996, as determined by the Governor. Thereafter, the term of each member shall be six years. Within 15 days of any vacancy, the Governor shall appoint a person to serve the unexpired portion of the term.

(e) No current or former officer or employee of this State is eligible for appointment to the commission.

(f) Public notice shall be given of all meetings of the commission, and the meetings shall be open to the public.

(g) On or before December 3, 1990, the commission shall, by a single resolution adopted by a majority of the membership of the commission, establish the annual salary and the medical, dental, insurance, and other similar benefits of state officers. The annual salary and benefits specified in that resolution shall be effective on and after December 3, 1990.

Thereafter, at or before the end of each fiscal year, the commission shall, by a single resolution adopted by a majority of the membership of the commission, adjust the annual salary and the medical, dental, insurance, and other similar benefits of state officers. The annual salary and benefits specified in the resolution shall be effective on and after the first Monday of the next December.

(h) In establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits, the commission shall consider all of the following:

(1) The amount of time directly or indirectly related to the performance of the duties, functions, and services of a state officer.

(2) The amount of the annual salary and the medical, dental, insurance, and other similar benefits for other elected and appointed officers and officials in this State with comparable responsibilities, the judiciary, and, to the extent practicable, the private sector, recognizing, however, that state officers do not receive, and do not expect to receive, compensation at the same levels as individuals in the private sector with comparable experience and responsibilities.

(3) The responsibility and scope of authority of the entity in which the state officer serves.

(i) Until a resolution establishing or adjusting the annual salary and the medical, dental, insurance, and other similar benefits for state officers takes effect, each state officer shall continue to receive the same annual salary and the medical, dental, insurance, and other similar benefits received previously.

(j) All commission members shall receive their actual and necessary expenses, including travel expenses, incurred in the performance of their duties. Each member shall be compensated at the same rate as members, other than the chairperson, of the Fair Political Practices Commission, or its successor, for each day engaged in official duties, not to exceed 45 days per year.

(k) It is the intent of the Legislature that the creation of the commission should not generate new state costs for staff and services. The Department of Personnel Administration, the Board of Administration of the Public Employees' Retirement System, or other appropriate agencies, or their successors, shall furnish, from existing resources, staff and services to the commission as needed for the performance of its duties.

(l) "State officer," as used in this section, means the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, member of the State Board of Equalization, and Member of the Legislature."

San Francisco's Charter Sections

"SEC. 2.100. COMPOSITION AND SALARY.

The Board of Supervisors shall consist of eleven members elected by district.

The office of Board of Supervisors member is a full time position. The Civil Service Commission shall set the Supervisors' salary once every five years. Before the Commission determines the Supervisors' salary, it shall conduct and consider a salary survey of other full time California City Councils and County Boards of Supervisors and it may consider the Consumer Price Index (CPI).

The Civil Service Commission shall timely transmit its determination of the Supervisors' salary to the Controller, so that funds can be set aside for that purpose. The Controller shall include the Civil Service Commission's determination in appropriate budget documents to insure implementation. This determination may not be changed except by the Civil Service Commission.

The Civil Service Commission shall establish dates for an appropriate five-year cycle for making the determinations required by this Section, in order to efficiently coordinate with City budget processes and related procedures. In order to institute this five-year cycle the initial determination may be for less than a five-year period, as determined by the Civil Service Commission.

If the City and employee organizations agree to amend the compensation provisions of existing memoranda of understanding to reduce costs, the Civil Service Commission shall review and amend the Supervisors' salary as necessary to achieve comparable cost savings in the affected fiscal year or years.

The provisions of this Section shall apply, notwithstanding any other provision of this Charter.

(Amended November 1996; June 1998; November 2002)"

Los Angeles Charter Sections

"Sec. 218. Compensation of Elected Officers and Limitation on Outside Activities.

(a) **Compensation.** The Mayor, City Attorney, Controller and members of the Council shall receive compensation for their services only as provided in this section and shall not receive any other compensation for those services.

(1) *Salaries.* Members of the City Council shall be paid a salary equal to that prescribed by law for judges of the Municipal Court of the Los Angeles Judicial District or its successor in the event that court is dissolved or reconstituted.

The Controller shall be paid a salary that is 10% more than that of a Council member. The City Attorney shall be paid a salary that is 20% more than that of a Council member. The Mayor shall be paid a salary that is 30% more than that of a Council member.

The Controller shall be responsible for ascertaining the salary of Municipal Court judges and for setting and adjusting the salaries of elected officers in accordance with this section. Salaries shall be paid in bi-weekly increments unless the Council, by ordinance, prescribes otherwise.

(2) *Other Benefits.* The Council may, by ordinance, subject to referendum as specified in Article IV of the Charter, confer benefits other than salary upon elected officers as additional compensation for their services. However, benefits from the Los Angeles City Employees Retirement System may not be provided for elected officers that would exceed benefits generally provided to members of the System who are non-represented officers or employees of the City or, if there are no non-represented officers or employees, that would exceed benefits generally provided to other members of the System.

(3) *Operative Date of Changes in Salaries.* The salaries of elected officers shall be adjusted in the manner provided in this section upon the effective date of any change in the salaries of Municipal Court judges.

(b) **Restrictions on Outside Activities.** The Mayor, City Attorney, Controller, and members of the Council shall devote their entire time to duties related to their offices. They shall not receive any compensation, including honoraria, for their services other than that provided in this section, except that which may be provided for their serving on governmental entities where payment is authorized for other governmental officers or employees serving in that capacity."